

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Children's Store Front School	)	File No. SLD-254685
New York, New York	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted: February 6, 2003**

**Released: February 7, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review tiled by the Children's Store Front School (CSF), New York, New York.<sup>1</sup> CSF requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying its Funding Year 2001 requests for discounts under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we affirm SLD's decision and deny the Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> The Commission's rules require that the applicant make a bona fide request for services by filing

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<sup>1</sup> Letter from Bruno Navasky, Children's Store Front, to Federal Communications Commission, tiled May 14, 2001 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>2</sup> See Request for Review. Previously, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now **known** as Funding Year 2000, and so on.

47 C.F.R. §§ 54.502, 54.503

with the Administrator an FCC Form 470.<sup>4</sup> The FCC Form 470 is posted to the Administrator's website for all potential competing service providers to review.<sup>5</sup> After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.<sup>6</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3 Given the enormous volume of applications and other submissions that SLD processes and reviews each year, it is necessary for SLD to put in place measures to ensure prompt resolution of applications. One such measure in place in Funding Year 2001 was a programmatic policy that applicants from whom SLD solicits additional information necessary to complete their application respond with that information within seven days of being contacted.<sup>7</sup> The policy has been necessary in order to prevent applicants from unduly delaying the application process.<sup>8</sup>

4 On January 17, 2001, CSF submitted an application for discounts, requesting a discount rate of 90%.<sup>9</sup> During its review of CSF's application, SLD contacted CSF repeatedly for documentation validating their request for a 90% discount rate. SLD made ten unsuccessful attempts between May and October 2001 to obtain the documentation before concluding that CSF had failed to timely produce the documentation validating the 90% rate.<sup>10</sup> SLD therefore reduced the requested rate to 60%.

<sup>4</sup> Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

<sup>5</sup> 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

<sup>6</sup> 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

<sup>7</sup> See *Request for Review by Nefesh Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-27881, CC Dockets No. 96-45 and 97-21, Order, DA 99-2284 (Coni. Car. Bur. rel. October 22, 1999) (citing seven-day policy).

<sup>8</sup> *Request for Review by Seventh Day Adventist School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-193882, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 658, para. 8 (Com. Car. Bur. 2002).

<sup>9</sup> FCC Form 471, Children's Store Front School, filed January 17, 2001.

<sup>10</sup> SLD Application Activity Log, SLD No. 254685, generated May 21, 2002.

Because of the lower rate, SLD denied all of CSF's funding requests.<sup>11</sup> SLD denied the requests seeking internal connections because the 60% discount rate was not sufficient to render CSF eligible for internal connections discounts in Funding Year 2001.<sup>12</sup> The remaining funding requests were denied because CSF had failed to demonstrate that it had sufficient resources to pay for a 40% share of the costs, as opposed to a 10% share.<sup>13</sup> CSF then filed the pending Request for Review.

6 In *Beginning with Children Charter School*, the Bureau held that if an applicant fails to provide adequate proof that it has secured sufficient resources to pay for its share of the cost of services requested, SLD has sonic discretion to allow an applicant the opportunity to provide additional documentation demonstrating the necessary resources.<sup>14</sup> The Bureau left to SLD's "reasonable discretion whether further contacts should be made, considering such factors as whether the remaining problem is relatively simple or involves a small amount, the attempts made by SLD to resolve it previously, and the responses to previous inquiries." "The Bureau noted explicitly, however, that it does not require SLD "to repeatedly contact applicants for new or clarifying information."<sup>16</sup>

7. In its Request for Review, CSF asserts that it has documentation to support its requested rate, and that the earlier failure to submit it was the fault of its previous contact person, who was subsequently replaced.<sup>17</sup> However, it is well-established that employee error does not relieve applicants of their responsibility to comply with the program's rules and procedures.<sup>18</sup> The seven-day policy is necessary in light of the tremendous number of applications, and the volume of information that SLD must seek to ensure compliance with program rules and guard against waste and fraud. Because we do not generally review evidence that was not properly part of the record before SLD, we will not consider the validating documentation attached to the

<sup>11</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to John Dotson, Children's Store Front School, dated March 15, 2002 (Funding Commitment Decision Letter), at 6-7.

<sup>12</sup> *Id.* at 7.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Request for Review by Beginning with Children Charter School and Yeshiva Karlin-Stolin, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-256153, SLD-265665, Order, DA 03-245, para. 11 (Wireline Comp. Bur. rel. Jan. 30, 2003).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

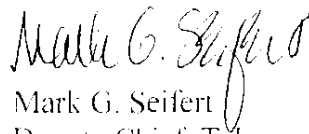
<sup>17</sup> Request for Review at 1. CSF also requests that we visit the school in person to determine whether they are entitled to a 90% rate. *See id.* However, in-person examination is not the procedure used to make that determination, and CSF, like other applicants, is required to comply with SLD's established procedures and documentation requests.

<sup>18</sup> *Request for Review and Waiver by Sangerville Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-239547, CC Dockets No. 96-45 and 97-21, Order, DA 02-1519, para. 6 (Wireline Comp. Bur. rel. June 28, 2002).

Request for Review that was not timely provided to SLD.<sup>19</sup> Permitting applicants to correct their applications during the appeals process would result in undue confusion, delay, and administrative burden. In conclusion, we find that CSF did not timely comply with SLD's request for validation of its discount rate, and therefore affirm SLD's decision and deny the Request for Review.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by the Children's Store Front School, New York, New York, on May 14, 2002 IS DENIED.

## FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

<sup>19</sup> *Request for Review by Children's Home Society, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-183026, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Red 21227, n. 26 (Com. Car. Bur. 2001).